



Federal Communications Commission
Washington, D.C. 20554

May 25, 2018

Hearst Stations Inc.
PO Box 1800
Raleigh, NC 27602

Re: Request for Modification and
Waiver of Phase Assignment
WTAE-TV, Pittsburgh, PA
Facility ID No. 65681
LMS File No. 0000052992

Dear Licensee,

On April 18, 2018, Hearst Stations Inc. (Hearst), licensee of Station WTAE-TV, Pittsburgh, Pennsylvania (Station or WTAE-TV), filed a *Request for Modification and Waiver of Phase Assignment*, requesting to modify the post-incentive auction transition phase assignment assigned to the Station in the *Closing and Channel Reassignment Public Notice* from Phase 4, and instead transition on or before September 1, 2018, with a testing period to commence immediately prior.¹ For the reasons below, we grant Hearst's request for waiver and modify WTAE-TV's phase assignment to permit it to commence testing and transition to its post-auction channel on or before September 1, 2018, subject to compliance with all Commission rules applicable to repacked stations, including completion of all consumer education requirements and notice to multichannel video programming distributors (MVPDs),² compliance with FCC Form 2100, Schedule 387 reporting requirements,³ and any additional commitments made in the waiver request.

Background. Pursuant to the *Transition Scheduling Adoption Public Notice*, individual stations may request waivers of their phase assignments.⁴ A waiver is appropriate where the particular facts

¹ See *Incentive Auction Closing and Channel Reassignment Public Notice: The Broadcast Television Incentive Auction Closes; Reverse Auction and Forward Auction Results Announced; Final Television Band Channel Assignments Announced; Post-Auction Deadlines Announced*, Public Notice, 32 FCC Rcd 2786 (WTB & MB 2017) (*Closing and Channel Reassignment Public Notice*). See LMS File No. 0000052992 (as amended May 18, 2018) Waiver Request with Vendor Letters (Waiver Request) and Supplement to Request for Waiver of Transition Phase Assignment (Supplement).

² Repacked stations are required to conduct consumer outreach efforts including providing on-air viewer notifications in the form of public service announcements as well as on-screen crawls at least thirty (30) days prior to transitioning to their post-auction channels. See 47 CFR § 73.3700(c). To the extent applicable, repack stations are also required to provide MVPDs with notice ninety (90) days prior to transitioning. See 47 CFR 73.3700(d).

³ See *Incentive Auction Task Force and Media Bureau Release Transition Progress Report and Filing Requirements for Stations Eligible for Reimbursement from the TV Broadcast Relocation Fund & Seek Comment on the Filing of the Report by Non-Reimbursable Stations*, Public Notice, 32 FCC Rcd 256 (MB 2017) (*subsequent history omitted*). In addition to filing on a quarterly basis, repacked stations are required to file an FCC Form 2100, Schedule 387 (1) 10 weeks before the end of their assigned construction deadline; (2) 10 days after they complete all work related to construction of their post auction facilities; and (3) five days after they cease broadcasting on their pre-auction channel. *Id.* at 258-59, para. 8.

⁴ See *Incentive Auction Task Force and Media Bureau Adopt A Post-Incentive Auction Transition Scheduling Plan*, MB Docket No. 16-306 and GN Docket No. 12-268, 32 FCC Rcd 890, 912-14, paras. 47-52 (MB 2017) (*Transition Scheduling Adoption Public Notice*).

would make strict compliance inconsistent with the public interest and deviation from the general rule would relieve hardship, promote equity, or produce a more effective implementation of overall policy on an individual basis.⁵ The Media Bureau (Bureau) has stated it will evaluate such requests on a case-by-case basis in order to facilitate a timely and orderly transition and assess the impact of such requests on the transition schedule, including the impact on other broadcasters as well as viewers.⁶ The Bureau determined that it would view favorably requests that are compliant with the Commission's rules and have little or no impact on the transition schedule.⁷ Requests that the staff determines would be likely to delay or disrupt the transition schedule will be viewed unfavorably.⁸

WTAE-TV is currently licensed to operate on channel 51. It was reassigned to channel 27 in the *Closing and Channel Reassignment Public Notice* and assigned to transition Phase 4, which has a testing period start date of June 22, 2019 and phase completion date of August 2, 2019. WTAE-TV is located in the Pittsburgh, Pennsylvania, Designated Market Area (Pittsburgh DMA). A total of fourteen stations, including WTAE-TV, were repacked in the Pittsburgh DMA and are all currently assigned to Phase 4. Hearst requests permission to begin testing and commence operation on WTAE-TV's post-auction channel on or before September 1, 2018.⁹ Hearst states that modification of its phase assignment "will serve the public interest by maximizing and streamlining the use of scarce transition resources and facilitating an orderly and efficient transition...while causing minimal impact on broadcast television viewers."¹⁰ In particular, Hearst asserts that it will permit a single mobilization of its tower crew and prevent viewer loss that would have occurred if WTAE-TV were required to operate from its auxiliary facility for an extended period of time—as long as twelve months.¹¹ In addition, Hearst provides a letter of support from T-Mobile stating that it is currently operating in the 700 MHz A Block, which is directly adjacent to channel 51. According to T-Mobile, allowing WTAE-TV to conduct an early transition to its post-auction channel would "alleviate the need to implement inter-service interference techniques and permit more expansive deployment of wireless service in the [Pittsburgh, PA] PEA."¹²

Hearst also provides an engineering analysis demonstrating that its early transition will not create any new linked-station sets or result in impermissible interference during the transition period.¹³ Hearst

⁵ See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); 47 CFR § 1.3 (waiver for good cause shown). See also *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 913-14, para. 51 and n.171.

⁶ See *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 912-14, paras. 49-52. See also *Incentive Auction Task Force and Media Bureau Announce Procedures for the Post-Incentive Broadcast Transition*, MB Docket No. 16-306 and GN Docket No. 12-268, 32 FCC Rcd 858, 881-82, para 73 (MB 2017).

⁷ *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd 912-13, para. 49 and n.163.

⁸ *Id.*

⁹ LMS File No. 0000052992, Third Amendment Specification of New Early Transition Target Date (modifying requested phase completion deadline to September 1, 2018, with a "target date" of August 25, 2018).

¹⁰ Waiver Request at 2.

¹¹ *Id.* at 2-3. In the *Transition Scheduling Adoption Public Notice* the Bureau recognized that some stations may have to operate for a temporary period through use of an interim or auxiliary facility. See *id.* at 918, para. 62-63.

¹² Waiver Request, WTAE-TV Second Amendment T-Mobile Support at 2. T-Mobile notes that it does not have an agreement or commercial arrangement with Hearst with regards to its early transition, but supports Hearst's independent request. *Id.*

¹³ Waiver Request at 2-3, Supplement at 1 and 4-13.

notes that, while its proposed early transition will create an additional rescan period in the Pittsburgh DMA, there is currently only one rescan period for the DMA.¹⁴ Adding an additional rescan period would continue to satisfy the two rescan periods per DMA limitation used in the tool adopted by the Bureau in the *Transition Scheduling Adoption Public Notice* to assign stations to transition phases.¹⁵ Hearst goes on to state that in order to mitigate any negative viewer impact, it will conduct consumer education and outreach efforts beyond what is required by Commission rules, including through the use of its digital media assets and on-air news content.¹⁶

Discussion. Upon review of the facts and circumstances presented, we find that the Licensee's request to permit WTAE-TV to transition to its post-auction channel on or before September 1, 2018, satisfies the requirements for a waiver and is in the public interest. We agree that the change to WTAE-TV's transition phase should not have an adverse impact on the transition schedule or a negative impact on other stations or viewers. A staff analysis confirms that the phase change does not create any new linked-station sets and will not result in new interference above the two percent permitted during the transition.¹⁷ While viewers in the Pittsburgh DMA will be subject to an additional rescan period, the total number of rescan periods will be limited to two.¹⁸ Hearst has also committed to put in place viewer outreach programs beyond those required by the Commission rules to ensure that viewers will be well-informed about the change in channel and transition schedule. Hearst also presents evidence that not only will the phase change help facilitate a more efficient transition in the Pittsburgh DMA and decrease the risk of extended viewer disruption, but its early transition off channel 51 will promote the Commission's countervailing Commission public policy goal of relocating channel 51 stations in order to facilitate wireless broadband deployment in the 700 MHz A Block. Based on an examination of the totality of the circumstances, we find on balance that the benefit of enhancing wireless broadband deployment, facilitating a more efficient transition, and additional consumer education and outreach efforts outweigh the viewer burden of an additional rescan period in this case.

¹⁴ Supplement at 3, *citing* Letter from Barbara A. Kreisman, Chief Video Division, Media Bureau to WQED Multimedia, DA 18-425 (Apr. 27, 2018) (moving station WQED(TV), Pittsburgh, PA, from transition Phase 9 to Phase 4).

¹⁵ Supplement at 3; see *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 898-99, paras. 20-21.

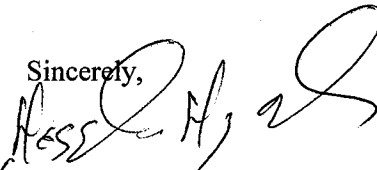
¹⁶ Waiver Request at 3. In its initial filing Hearst committed to supporting the rescan of non-commercial educational station WQED, which was scheduled to take place in Phase 9. However, because WQED has voluntarily agreed to have its phase changed from transition Phase 9 to Phase 4, in its supplement Hearst states that such additional outreach for WQED viewers is no longer needed. Supplement at 3. We welcome station coordination of transition efforts.

¹⁷ See *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 897, para. 16 (allowing temporary increased pairwise (station-to-station) interference of up to two percent during the transition period).

¹⁸ See *id* at 898-99, paras. 20-21 (permitting up to two rescan periods per DMA when assigning stations to transition phases).

Accordingly, we **GRANT** Hearst's *Request for Modification and Waiver of Phase Assignment* and modify the transition phase assignment for WTAE-TV from Phase 4 and permit the Station to commence testing and transition to its post-auction channel **on or before September 1, 2018, subject to** completion of applicable consumer education requirements and any required notice to MVPDs,¹⁹ compliance with the FCC Form 2100, Schedule 387 reporting requirements,²⁰ as well as the additional consumer education commitments made in the waiver request. Furthermore, WTAE-TV must cease operation on its pre-auction channel **no later than 11:59 pm local time on September 1, 2018.**

Sincerely,

for 
Barbara A. Kreisman
Chief, Video Division
Media Bureau

Cc:
Stephane Hartzell (via e-mail)

¹⁹ See 47 CFR § 73.3700(c), (d).

²⁰ See *supra* note 4; 47 CFR § 73.3700(e)(5).